

## **§ 219.609**

random alcohol testing to 50 percent of all covered employees.

(e) The railroad must randomly select and test a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the Administrator. If the railroad conducts random alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random testing at the same minimum annual percentage rate under this part or any DOT agency alcohol testing rule.

(f) If a railroad is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

## **§ 219.609 Participation in alcohol testing.**

A railroad must, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in breath testing to determine compliance with § 219.101, and the employee must provide the required breath and complete the required paperwork and certifications. Compliance by the employee may be excused only in the case of a documented medical or family emergency.

## **§ 219.611 Test result indicating prohibited alcohol concentration; procedures.**

Procedures for administrative handling by the railroad in the event an employee's confirmation test indicates an alcohol concentration of .04 or greater are set forth in § 219.104.

## **49 CFR Ch. II (10–1–02 Edition)**

### **Subpart H—Drug and Alcohol Testing Procedures**

#### **§ 219.701 Standards for drug and alcohol testing.**

(a) Drug testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(b) Alcohol testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(c) Each covered employee who is notified of selection for testing and who is not performing covered service at the time of notification must proceed to the testing site immediately. The railroad must ensure that an employee who is performing covered service at the time of notification shall, as soon as possible without affecting safety, cease to perform covered service and proceed to the testing site.

### **Subpart I—Annual Report**

#### **§ 219.801 Reporting alcohol misuse prevention program results in a management information system.**

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA by March 15 of each year a report covering the previous calendar year (January 1–December 31), summarizing the results of its alcohol misuse prevention program.

(b) A railroad that is subject to more than one DOT agency alcohol regulation must identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any alcohol test on a covered employee subject to the regulations of more than one DOT agency, the railroad must determine which DOT agency regulation or rule authorizes or requires the test. The test result information must be directed to

the appropriate DOT agency or agencies.

(c) Each railroad must ensure the accuracy and timeliness of each report submitted. The report must be submitted on one of the two forms specified by the FRA.

(d) Each report required by this section that contains information on an alcohol screening test result of .02 or greater or a violation of the alcohol misuse provisions of subpart B of this part must include the following elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3)(i) Number of screening tests by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(ii) Number of confirmation tests, by type of test and employee category.

(4) Number of confirmation alcohol tests indicating an alcohol concentration equal of .02 or greater but less than .04, by type of test and employee category.

(5) Number of confirmation alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in §219.104(d)).

(8) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of con-

firmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(9) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of confirmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(10) Number of covered employees who were found to have violated other provisions of subpart B of this part, and the action taken in response to the violation.

(11) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater.

(12) Number of covered employees who refused to submit to a random alcohol test required under this part.

(13) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(14) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use during the reporting period.

(e) Each report required by this section that contains information on neither a screening test result of 0.02 or greater nor a violation of the alcohol misuse provisions of subpart B of this part must include the following informational elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3) Number of screening tests by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(4) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).

(5) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted.

(6) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted.

(7) Number of covered employees who refused to submit to a random alcohol test required under this part.

(8) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(9) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use during the reporting period.

**§ 219.803 Reporting drug misuse prevention program results in a management information system.**

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA an annual report covering the calendar year, summarizing the results of its drug misuse prevention program.

(b) A railroad that is subject to more than one DOT agency drug regulation must identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any drug test on a covered employee subject to the regulations of more than one DOT agency, the railroad must determine which DOT agency regulation or rules authorizes or requires the test. The test result information must be directed to the appropriate DOT agency or agencies.

(c) Each railroad must ensure the accuracy and timeliness of each report submitted by the railroad or a consortium.

(d) Each railroad must submit the required annual reports no later than March 15 of each year. The report must be submitted on one of the forms specified by the FRA. A railroad with no positive test result must submit the “Drug Testing Management Information System Zero Positives Data Collection Form.” All other railroads must submit the “Drug Testing Management Information System Data Collection Form.”

(e) A railroad submitting the “Drug Testing Management Information System Data Collection Form” must address each of the following data elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by each agency.

(3) Number of specimens collected by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up), and employee category.

(4) Number of specimens verified negative by a Medical Review Officer (MRO) by type of test, and employee category.

(5) Number of specimens verified positive for one or more of the five drugs by a MRO by type of test, employee category, and type of drug. If a test has been verified positive by a MRO for multiple drugs, the employer should report the result as a positive for each type of drug.

(6) Number of applicants or transfers denied employment or transfer to a covered service position following a verified positive pre-employment drug test.

(7) Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during the reporting period.

(8) For cause drug testing, the number of specimens collected by reason for test (i.e., accident/injury, rules violation, or reasonable suspicion), type of authority (railroad or FRA), employee